



# TEXAS VITAL STATISTICS NEWS

Bureau of Vital Statistics, Texas Department of Health

Spring, 1999

Vol.2, No.3

## Missing Children

All Texas law enforcement agencies report missing children to the Missing Persons Clearinghouse of the Texas Department of Public Safety. The Clearinghouse sends daily reports to the Fraud Prevention Unit of the Bureau of Vital Statistics identifying missing children under the age of 11, as specified by law in 1997.

Upon receiving a report from the Clearinghouse or local law enforcement, the Fraud Unit flags the birth record of any child under the age of 11 who has been reported missing. Occasionally a request will be made to flag the records of other missing persons.

The Bureau of Vital Statistics flags both the electronic birth record and the original birth certificate. The electronic record is flagged by entering 500 in the "issue" window of the Sybase Birth Client Search. This code prevents the issuance of the

missing child's birth record.

At the same time, the child's original paper birth certificate is flagged and notification is sent to the local registrar who maintains a copy of the birth certificate. If a missing child was born out of state, appropriate officials in that state are notified.

If a local registrar or the state office receives a request for a missing child's birth record, the Fraud Prevention Unit must be notified. The request and fee can be accepted but the birth certificate of the missing child cannot be issued for a period of 21 days. The waiting period allows law enforcement to investigate the requesting party or reason for the request. After 21 days, a copy of the birth certificate can be issued to a qualified applicant.

Most missing children are found. Notification of these cleared cases is also

included in the daily report to the Fraud Unit from the Clearinghouse. About 75 to 80 percent of cases involve children who are found with an estranged spouse according to Theresa Becker at the Clearinghouse. A small percent of cases are cleared with the death of the child or the return of a runaway. And about 10 to 15 percent of cases are never cleared because the children cannot be found.

When the Clearinghouse for Missing Persons notifies the Fraud Unit that a case has been cleared, the Bureau then removes all flags on the birth record. The local registrar is notified to unflag the child's record as well.

The Fraud Prevention Unit handles an average of 6 cases per day. Questions should be directed to the Fraud Prevention Program at 512/458-7395 or Charles Brooks, Missing Children Coordinator at 512/458-7782.

## What can be found in the spring issue of our newsletter...

Missing Children .....	p. 1
Common-Law Marriage in Texas .....	p. 1
Paternity Determination	
Rules Updated .....	p. 2
Our Apologies .....	p. 2
Preparation of the Delayed	
Birth Certificate .....	p. 2
Children With Two Surnames:	
A Trend .....	p. 3
The Role of the Paternity Registry .....	p. 3
Dear State Registrar .....	p. 3
Available Reports .....	p. 4
Regional Conferences, June, 1999 .....	p. 4
Field Representatives .....	p. 4

## Common-Law Marriage in Texas

Funeral homes, hospitals, local registrars, and the general public frequently ask, "Is common-law marriage legal in Texas?" This question is very important because the answer can determine who may be listed as a father on a birth certificate or who may be listed as a surviving spouse on a death certificate. These questions in turn affect child support, inheritance rights, estate settlement, and social security benefits. So, back to the original question, "Is common-law marriage legal in Texas?"

Common-law marriage, also known as "informal marriage" is legal in Texas, as is marriage by ceremony. However, there are important differences in the registration of the two. For example, with common-law marriage a couple may or may not choose to register their informal marriage with the county clerk. If they do choose to register an informal marriage,

both the husband and wife must appear before the county clerk, and neither individual may be under 18 years of age.

Informal or common-law marriage is also distinct from marriage by ceremony for another reason. When a couple registers their informal marriage with the county clerk, they list the date from which they consider themselves to be married. In other words, a couple can be married for some period of time before registering their informal marriage. However, it is important to note once again that individuals under 18 years of age can not be common-law married. An 18 year-old could not come in to register an informal marriage and claim that he or she has been common-law married prior to turning 18.

Several important myths surround common-law marriage in Texas. The first

*See Common-Law Marriage, page 2*

## Common-Law Marriage in Texas

continued from page 1

myth involves the misconception that a couple must live together for a specified time period or own joint property. In fact, Sec. 2.401 of the Texas Family Code requires that, "the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others they were married." No time period or joint property ownership is mentioned.

In other words, a three-prong test can be applied in determining if a couple is common-law married: 1) the couple is in agreement that they are married, 2) they are living together, and 3) they are representing themselves, or are "holding out" to other individuals that they are married to one another.

If a common-law married couple should split up and one of the individuals is trying to prove in a proceeding that the common-law marriage occurred, he or she must start the determination process before the second anniversary of the date on which they separated and ceased living

together. Otherwise, it is rebuttably presumed that the individuals did not agree to be married.

The second myth involves the idea that although common-law marriage is legal in Texas, an individual married informally does not have to obtain a divorce before remarrying someone else. Again, this statement is false provided that they either registered the informal marriage with the county clerk, they mutually agree that they were informally, or the marriage has been established in a court proceeding.

According to a 1992 legal opinion from the Texas Department of Health Office of General Counsel, informal common-law marriage is terminated only by death or a court decree. In other words, Texas recognizes informal common-law marriage to be as legal as the formal process of marriage. Therefore, the same requirements apply. Only a divorce or death will dissolve the marriage.

For additional information, see the Texas Family Code §§2.401–2.405.

## Paternity Determination Rules Updated

On July 17, 1998, the Texas Board of Health approved a revision and an addition to the rules concerning the filing of supplemental birth records based upon a paternity determination.

Changes were made to update the terminology used in the Texas Administrative Code (TAC), Sections §181.8 and §181.9. The word **legitimation** was deleted from the text and replaced by **paternity determination**. The word **legitimation** is no longer used in the Texas Statutes.

Also, an amendment was added to TAC §181.9. Section §181.9 b (the amendment) states: *The Bureau of Vital Statistics shall notify the Office of the Attorney General, the Title IV-D agency for the State of Texas, in a manner agreed by both agencies of any supplemental birth records based upon paternity.*

### Our Apologies

In the last issue, the Rusk County Clerk's Office was inadvertently not credited with winning the 5 Star Vital Registration Award two years in a row.

## Preparation of the Delayed Birth Certificate

This is the second part of a continuing series that started with *What Happens When a Birth or Death Record Has Not Been Filed* in the Winter, 1998, issue of the *Texas Vital Statistics News*.

**The Delayed Birth Certificate** The Delayed Certificate of Birth is the most important of the delayed registration forms. This form will become the permanent legal birth record. The form should be completed neatly with a typewriter or, if hand-written, printed legibly with black ink.

The registrant's birth information is added to items 1 through 9. Special attention should be given to the following problem areas.

**Item 1:** Show the full name of the registrant at birth. If a woman is married, her maiden name, not her married name, must be shown.

**Item 3:** Completely spell the color or race rather than use abbreviations.

**Item 5a:** Show the city or town of birth. If the registrant was not born in the city limits, place "Rural" in this item.

**Item 5b:** Show the county of birth. We do

verify to insure the city or town in 5a, if listed, is in the county shown in Item 5b.

**Items 6 and 7:** If the parents were not married at the time of birth, leave the father's name and place of birth blank. It is not necessary to add "Unknown."

**Item 8:** Show a woman's maiden name, not married name.

**Items 7 and 9:** Show the State or Country (NOT COUNTY) of the parents' place of birth. If the birthplace of a parent or both parents is not known, write "Unknown."

**Notarization** Any official who is designated to administer the oath, such as county clerks or deputy county clerks, may notarize the certificate.

**Item 10:** If the registrant is 18 years old or older, he or she will sign in the presence of a notary public. If the registrant is under 18 or is not able to sign, a parent or legal representative may sign.

**Item 11:** Show the address (street address, city and state) of the person who signs.

**Item 12:** Show the signature of the notary public. The space before Item 12 must show the date the certificate was signed.

**Item 13:** Show the notary's commission expiration date.

**Location of the Seal** Since most notary publics use an ink stamp seal, which is fairly large, we recommend that the seal be placed in the top left corner of the certificate so that the seal will not cover any important information. Although the word "Seal" is to the left of the space for the date signed, it is not necessary, nor recommended, that the seal be placed there. The position of the word "Seal" has not changed since 1960 when notary publics used embossed seals which would not usually detract from the content.

### Location of Supporting Documents

The space below the statement "DO NOT WRITE BELOW THIS LINE" is reserved for the Bureau of Vital Statistics personnel to enter information from supporting documentation. No other marks, stamps or writing should be made in this area.

**Next Issue (Summer 1999): Delayed Registrations for Children Between the Ages of 1 and 4**

## Children With Two Surnames: A Trend

A small but growing number of parents are giving their children two surnames. This trend is difficult to measure (see note below), but it is possible to get a rough estimate of the number of children with two surnames on their birth certificates.

In 1988, there were approximately 2,701 Texas resident birth certificates with two surnames entered for the infant. This represents about 0.9% of total Texas resident births for that year. Of the infants receiving two surnames, 25.5% were white, 20.4% were black, 52.5% were Hispanic, and 1.7% were of other or unknown races.

By 1997, the number of infants given two surnames at birth had grown markedly. There were approximately 12,137 Texas resident birth certificates indicating two surnames for the infant, or about 3.6% of Texas resident births. Of these, 12.1% were white, 10.9% were black, 75.8% were Hispanic, and 1.1%

were of other or unknown race.

The table below gives the approximate number and percentage of infants within each race/ethnicity receiving two surnames.

**Note:** Statistical Services did a computer search for the years 1988 and 1997 for all Texas resident birth certificates in which the infant's last name included a space or a hyphen. In addition to finding double surnames, the search found last names containing prefixes like "al," "el," "la," "de," "del,"

"San(ta)," "St.," "van," and "von." These did not count as second names. For example, "San Miguel" is not included as a double surname, but "Gomez-San Miguel" is included.

Additionally, the search found certificates in which suffixes like "Jr." and "III" were erroneously included in the last name field. These names were not included if they did not appear with a second name. Since this editing process is subject to error, the table results should be considered approximate.

1988	White	Black	Hispanic	Other	Total
Number of TX Resident Births	145,266	43,242	108,037	6,769	303,314
Approx. Number With Two Surnames	688	550	1,417	46	2,701
Approx. % With Two Surnames	0.5	1.3	1.3	0.7	0.9
1997	White	Black	Hispanic	Other	Total
Number of TX Resident Births	137,796	39,406	146,147	10,480	333,829
Approx. Number With Two Surnames	1,469	1,325	9,204	139	12,137
Approx. % With Two Surnames	1.1	3.4	6.3	1.3	3.6

## The Role of the Paternity Registry

One of the newest and least understood pieces of the paternity puzzle is the Paternity Registry. The Registry was established by the Texas Legislature and went into effect September 1, 1997.

Section 160.251 of the Family Code states that the purposes of the Paternity Registry are 1) to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered, and 2) to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the Registry or otherwise acknowledging their children.

A man must file with the Paternity Registry within thirty (30) days after the birth of the child; he may file anytime before the birth of the child. The Bureau of Vital Statistics (BVS) provides a form for this purpose, titled "Notice of Intent to Claim Paternity." The form must be completed and signed by the man before a notary public, and then mailed directly to BVS. There is no charge for filing with the Registry.

Forms are available from the BVS, and have been provided to hospitals, birthing centers, licensed child-placing agencies, county and district clerks, and several

other locations as prescribed by the Family Code.

A woman named in a Notice of Intent form has the opportunity to deny the man's claim of paternity, but must do so within thirty (30) days of being notified by the Bureau of Vital Statistics of his filing.

The denial must be made by completing a "Denial of Registrant's Paternity" form, signing it before a notary public, and mailing the form to BVS. Similarly, a man who has filed with the Registry may revoke the Notice of Intent by completing a "Revocation of Notice of Intent to Claim Paternity," signing it before a notary public, and mailing it to BVS. A revocation can be filed at any time.

Before a man's parental rights can be terminated in an adoption case, a search of the Paternity Registry must be requested. If he has properly filed a notice of intent to claim paternity, his information will be provided to the attorney or agency making the request. BVS charges a fee of \$9.00 for the registry search. However, the Department of Protective and Regulatory Services and the Office of the Attorney General are not required to pay the fee.

The Notice of Intent to Claim Paternity form is often confused with the Acknowledgment of Paternity. The Notice of Intent cannot be used to add a father's information to a birth certificate. While being included in the Registry does not establish a presumption of paternity, the information is admissible in court proceedings and could be used to establish a legal finding of paternity.

For more information regarding the Paternity Registry, call the Bureau of Vital Statistics at (512) 458-7782.

### Dear State Registrar

**Q. The date of the ceremony on a marriage license indicates that the marriage occurred before the license was issued. Can the county clerk accept this marriage license for filing?**

**A. No.** The date of the marriage cannot precede the date on which the license was issued. The couple should either 1) apply for a new marriage license and have a new ceremony or 2) register an informal marriage and back date the registration to the day the ceremony took place.

If you have a question, please e-mail us at [bvsweb@tdh.state.tx.us](mailto:bvsweb@tdh.state.tx.us), fax it to (512) 458-7233, or mail to Bureau of Vital Statistics, Texas Department of Health, 1100 W. 49th St., Austin, TX 78756-3191.  
Attn: Texas Vital Statistics News.

**To subscribe, unsubscribe, or change your address,  
please complete the following.**

Check the appropriate box.

- ☐ Add me to your mailing list.  
☐ Change my address.  
☐ Remove me from your mailing list.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Business: \_\_\_\_\_

P.O. Box or Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip (include 4 digit, if known): \_\_\_\_\_

Telephone Number: \_\_\_\_ (\_\_\_\_) \_\_\_\_\_

*Texas Vital Statistics News* (ISSN 016976) is published quarterly by the Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191. Periodical Postage paid at Austin, TX. POSTMASTER: Send address changes to *Texas Vital Statistics News*, Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191.



Walter D. Wilkerson, Jr., MD  
Chair, Texas Board of Health

William R. Archer III, M.D.  
Commissioner of Health

**Editorial Board**

Karen Lassiter, Ph.D., Editor  
Statistical Services

Steve Elkins, Assoc. Editor  
Vital Registration

Stephanie Herbert, Assoc. Editor  
Request Processing

Richard B. Bays  
State Registrar

Raymond Andrews  
Director, Request Processing

Geraldine Harris  
Director, Vital Registration

Tom Pollard  
Director, Statistical Services

**Contributing staff**

Melanie Williams, Ph.D.  
Stephanie Easterday  
Sandra Lackey

Edward Mata  
Charles Brooks

phone (512) 458-7111 x 2949  
FAX (512) 458-7233  
e-mail: bvsweb@tdh.state.tx.us  
internet: http://www.tdh.state.tx.us/bvs

**Available Reports**

<http://www.tdh.state.tx.us/bvs/reports.htm>

Texas Vital Statistics 1997  
Texas Child Fatality Review Teams  
Annual Report 1995  
1996 Mortality Report for Nursing  
Facilities and Related Institutions  
The impact of alcohol use on mortality:  
new estimates from the revised Texas  
death certificate  
Delayed childbearing: increased maternal  
age at first birth and its association with  
labor and delivery outcomes  
Acknowledgment of paternity and its  
effect on unmarried mothers and birth  
outcomes

**Regional Conferences  
June, 1999**

The Bureau of Vital Statistics announces one day Regional Conferences this June. Because of possible significant changes concerning paternity being discussed by the Texas Legislature, we are scheduling a half day of each conference to address these changes. Full details and registration forms will be sent out by May 1st.

**Galveston**

June 14, Victorian Condo Hotel

**Amarillo**

June 18, Airport Radisson

**McAllen**

June 21, Holiday Inn

**Field Representatives**

North Texas ..... Jola Edwards  
(512)458-7111 x2530  
Jola.Edwards@tdh.state.tx.us  
East Texas ..... Roger Faske  
(512)458-7111 x2534  
Roger.Faske@tdh.state.tx.us  
Central Texas ..... Melanie Williams, Ph.D.  
(512)458-7367  
Melanie.Williams@tdh.state.tx.us  
South & West Texas ..... Steve Elkins  
(512)458-7111 x2949  
Steven.Elkins@tdh.state.tx.us

Bureau of Vital Statistics  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756

Periodical Rate  
Austin, Texas

**Address Service Requested**